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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/737,050	12/14/2000	Christopher Tate	583-1044	7139

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EXAMINER

SHELEHEDA, JAMES R

ART UNIT PAPER NUMBER

2623

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/737,050

Applicant(s)

TATE ET AL.

Examiner

James Sheleheda

Art Unit

2623

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 15 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
**CHRIS KELLEY**  
**SUPERVISORY PATENT EXAMINER**

**TECHNOLOGY CENTER 2600**

Continuation of 11. does NOT place the application in condition for allowance because:

On page 8, of applicant's response, without providing any specific reasoning, applicant makes the general argument that the operations center of Hendricks cannot be considered a "content providing server".

In response, Hendricks discloses wherein the operations center will compile content and provide it to local headends (column 8, lines 8-54). This clearly reads upon the broad limitation of a "content providing server".

On page 8, of applicant's response, without providing any specific reasoning, applicant makes the general argument that the headend of Hendricks cannot be considered a "distribution server".

In response, Hendricks discloses wherein local headends will receive content packages and distribute the content to viewers (column 8, line 55-column 9, line 8), and furthermore explicitly calls the local headend a "distribution center" (column 8, line 65-column 9, line 3). This clearly reads upon the broad limitation of a "distribution server".

On page 9, of applicant's response, applicant argues that while the operations center provides a "program control information signal", this signal does not include any data relating to an "offset value".

In response, Hendricks specifically discloses wherein the "program control information signal" transmitted from the operations center includes the schedule information for the programming, such as start times (column 8, lines 30-43). Hendricks further discloses wherein the scheduled programming is transmitted as NVOD programming with scheduled start times that are time staggered and offset from one another (column 34, lines 31-59). Thus, it is abundantly clear that the operations center transmits offset information to the local headend, as the operations center is disclosed as designating the scheduled offset start times of the programming and transmitting to the local headends.

On page 9, of applicant's response, applicant argues that the local headend will schedule the transmission of content in response to user requests for the content.

In response, as indicated previously, Hendricks specifically discloses wherein the programming schedule, including start times, is created by the operations center (column 8, lines 30-43). Applicant's arguments to the contrary are incorrect and based solely upon ignoring the entire passages of Hendricks which were previously cited. In addition to the fact that program start times are decided by the operations center, as previously indicated, Hendricks specifically discloses that when users request an NVOD program, the system will determine the channel with the next staggered start time of the requested program (see column 34, lines 43-46 and lines 52-54) and then compile all user requests for the same program to provide the program to the requesting users (column 34, lines 53-59). Thus, it is abundantly clear that the staggered start times of the various programs are assigned and determined prior to/independent of any actual user requests for the video, as upon user request, the system will then identify when the next start time of the program is to take place.

In response to applicant's arguments, on pages 10-13,

1. As indicated above, it is the operations center of Hendricks, and not the local headend which schedules the programs. Thus, the combination of Hodge's system, for allowing a motion picture studio to request when their movie is distributed, would not in any way teach away from Hendricks' system, as the operations center schedules the distribution of content.

2. As indicated in the previous action, Hodge discloses a system wherein a super hub controller, which dictates the content distribution schedule of local distribution networks (see Figs. 2 and 2; column 3, lines 33-38), provides for motion picture studios to request when their movie is to be distributed (column 4, line 64-column 5, line 11) for the clear benefit of ensuring that maximum revenue is attained for broadcast programming (column 3, lines 40-51).

Thus the combination of Hendricks' with Hodge is considered proper, and applicant's arguments are not persuasive.